

ASSEMBLY BILL

No. 677

Introduced by Assembly Member Parra

February 17, 2005

An act to amend Sections 667.1, 667.5, 1170.125, and 1192.7 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

AB 677, as introduced, Parra. Sentencing: three strikes: solicitation of murder.

Existing law defines certain listed felonies as “serious” and “violent” for, among other purposes, enhancing the punishment for felonies pursuant to existing sentencing provisions commonly known as the “Three Strikes” law. Existing law, amended by initiative Proposition 21, which allows the Legislature to amend its provisions by a 2/3 vote, fixed the list of serious and violent felonies for purposes of the Three Strikes law as of the date the initiative was adopted by the voters, March 7, 2000.

This bill would add solicitation of murder to the list of serious and violent felonies, for purposes of amending those lists and for purposes of the Three Strikes provisions. The bill would amend the date fixing the date of the lists for purposes of Three Strikes by providing that the references to the lists are as they existed on the effective date of this bill.

By expanding the scope of a sentencing enhancement, this bill would impose a state-mandated local program.

By amending the provisions of an initiative statute, this bill would require a 2/3 vote of the Legislature.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 667.1 of the Penal Code is amended to
2 read:

3 667.1. Notwithstanding subdivision (h) of Section 667, for all
4 offenses committed on or after the effective date of this act, all
5 references to existing statutes in subdivisions (c) to (g), inclusive,
6 of Section 667, are to those statutes as they existed on ~~the~~
7 ~~effective date of this act~~ *January 1, 2006*, including amendments
8 made to those statutes by ~~this~~ *the act enacted during the 2005-06*
9 *Regular Session that amended this section.*

10 SEC. 2. Section 667.5 of the Penal Code is amended to read:

11 667.5. Enhancement of prison terms for new offenses because
12 of prior prison terms shall be imposed as follows:

13 (a) Where one of the new offenses is one of the violent
14 felonies specified in subdivision (c), in addition to and
15 consecutive to any other prison terms therefor, the court shall
16 impose a three-year term for each prior separate prison term
17 served by the defendant where the prior offense was one of the
18 violent felonies specified in subdivision (c). However, no
19 additional term shall be imposed under this subdivision for any
20 prison term served prior to a period of 10 years in which the
21 defendant remained free of both prison custody and the
22 commission of an offense which results in a felony conviction.

23 (b) Except where subdivision (a) applies, where the new
24 offense is any felony for which a prison sentence is imposed, in
25 addition and consecutive to any other prison terms therefor, the
26 court shall impose a one-year term for each prior separate prison
27 term served for any felony; provided that no additional term shall
28 be imposed under this subdivision for any prison term served
29 prior to a period of five years in which the defendant remained
30 free of both prison custody and the commission of an offense
31 which results in a felony conviction.

1 (c) For the purpose of this section, “violent felony” shall mean
2 any of the following:

3 (1) Murder or voluntary manslaughter.

4 (2) Mayhem.

5 (3) Rape as defined in paragraph (2) or (6) of subdivision (a)
6 of Section 261 or paragraph (1) or (4) of subdivision (a) of
7 Section 262.

8 (4) Sodomy by force, violence, duress, menace, or fear of
9 immediate and unlawful bodily injury on the victim or another
10 person.

11 (5) Oral copulation by force, violence, duress, menace, or fear
12 of immediate and unlawful bodily injury on the victim or another
13 person.

14 (6) Lewd acts on a child under the age of 14 years as defined
15 in Section 288.

16 (7) Any felony punishable by death or imprisonment in the
17 state prison for life.

18 (8) Any felony in which the defendant inflicts great bodily
19 injury on any person other than an accomplice which has been
20 charged and proved as provided for in Section 12022.7 or
21 12022.9 on or after July 1, 1977, or as specified prior to July 1,
22 1977, in Sections 213, 264, and 461, or any felony in which the
23 defendant uses a firearm which use has been charged and proved
24 as provided in Section 12022.5 or 12022.55.

25 (9) Any robbery.

26 (10) Arson, in violation of subdivision (a) or (b) of Section
27 451.

28 (11) The offense defined in subdivision (a) of Section 289
29 where the act is accomplished against the victim’s will by force,
30 violence, duress, menace, or fear of immediate and unlawful
31 bodily injury on the victim or another person.

32 (12) Attempted murder.

33 (13) A violation of Section 12308, 12309, or 12310.

34 (14) Kidnapping.

35 (15) Assault with the intent to commit mayhem, rape, sodomy,
36 or oral copulation, in violation of Section 220.

37 (16) Continuous sexual abuse of a child, in violation of
38 Section 288.5.

39 (17) Carjacking, as defined in subdivision (a) of Section 215.

40 (18) A violation of Section 264.1.

1 (19) Extortion, as defined in Section 518, which would
2 constitute a felony violation of Section 186.22 of the Penal Code.

3 (20) Threats to victims or witnesses, as defined in Section
4 136.1, which would constitute a felony violation of Section
5 186.22 of the Penal Code.

6 (21) Any burglary of the first degree, as defined in subdivision
7 (a) of Section 460, wherein it is charged and proved that another
8 person, other than an accomplice, was present in the residence
9 during the commission of the burglary.

10 (22) Any violation of Section 12022.53.

11 (23) A violation of subdivision (b) or (c) of Section 11418.

12 (24) *Solicitation of murder, as defined in subdivision (b) of*
13 *Section 653f.*

14 The Legislature finds and declares that these specified crimes
15 merit special consideration when imposing a sentence to display
16 society's condemnation for these extraordinary crimes of
17 violence against the person.

18 (d) For the purposes of this section, the defendant shall be
19 deemed to remain in prison custody for an offense until the
20 official discharge from custody or until release on parole,
21 whichever first occurs, including any time during which the
22 defendant remains subject to reimprisonment for escape from
23 custody or is reimprisoned on revocation of parole. The
24 additional penalties provided for prior prison terms shall not be
25 imposed unless they are charged and admitted or found true in
26 the action for the new offense.

27 (e) The additional penalties provided for prior prison terms
28 shall not be imposed for any felony for which the defendant did
29 not serve a prior separate term in state prison.

30 (f) A prior conviction of a felony shall include a conviction in
31 another jurisdiction for an offense which, if committed in
32 California, is punishable by imprisonment in the state prison if
33 the defendant served one year or more in prison for the offense in
34 the other jurisdiction. A prior conviction of a particular felony
35 shall include a conviction in another jurisdiction for an offense
36 which includes all of the elements of the particular felony as
37 defined under California law if the defendant served one year or
38 more in prison for the offense in the other jurisdiction.

39 (g) A prior separate prison term for the purposes of this
40 section shall mean a continuous completed period of prison

1 incarceration imposed for the particular offense alone or in
2 combination with concurrent or consecutive sentences for other
3 crimes, including any reimprisonment on revocation of parole
4 which is not accompanied by a new commitment to prison, and
5 including any reimprisonment after an escape from incarceration.

6 (h) Serving a prison term includes any confinement time in
7 any state prison or federal penal institution as punishment for
8 commission of an offense, including confinement in a hospital or
9 other institution or facility credited as service of prison time in
10 the jurisdiction of the confinement.

11 (i) For the purposes of this section, a commitment to the State
12 Department of Mental Health as a mentally disordered sex
13 offender following a conviction of a felony, which commitment
14 exceeds one year in duration, shall be deemed a prior prison
15 term.

16 (j) For the purposes of this section, when a person subject to
17 the custody, control, and discipline of the Director of Corrections
18 is incarcerated at a facility operated by the Department of the
19 Youth Authority, that incarceration shall be deemed to be a term
20 served in state prison.

21 (k) Notwithstanding subdivisions (d) and (g) or any other
22 provision of law, where one of the new offenses is committed
23 while the defendant is temporarily removed from prison pursuant
24 to Section 2690 or while the defendant is transferred to a
25 community facility pursuant to Section 3416, 6253, or 6263, or
26 while the defendant is on furlough pursuant to Section 6254, the
27 defendant shall be subject to the full enhancements provided for
28 in this section.

29 This subdivision shall not apply when a full, separate, and
30 consecutive term is imposed pursuant to any other provision of
31 law.

32 SEC. 3. Section 1170.125 of the Penal Code is amended to
33 read:

34 1170.125. Notwithstanding Section 2 of Proposition 184, as
35 adopted at the November 8, 1994 General Election, for all
36 offenses committed on or after the effective date of this act, all
37 references to existing statutes in Section 1170.12 are to those
38 statutes as they existed on ~~the effective date of this act~~ *January 1,*
39 *2006*, including amendments made to those statutes by ~~this~~ *the*

1 act enacted during the 2005-06 Regular Session that amended
2 this section.

3 SEC. 4. Section 1192.7 of the Penal Code is amended to read:

4 1192.7. (a) Plea bargaining in any case in which the
5 indictment or information charges any serious felony, any felony
6 in which it is alleged that a firearm was personally used by the
7 defendant, or any offense of driving while under the influence of
8 alcohol, drugs, narcotics, or any other intoxicating substance, or
9 any combination thereof, is prohibited, unless there is insufficient
10 evidence to prove the people's case, or testimony of a material
11 witness cannot be obtained, or a reduction or dismissal would not
12 result in a substantial change in sentence.

13 (b) As used in this section "plea bargaining" means any
14 bargaining, negotiation, or discussion between a criminal
15 defendant, or his or her counsel, and a prosecuting attorney or
16 judge, whereby the defendant agrees to plead guilty or nolo
17 contendere, in exchange for any promises, commitments,
18 concessions, assurances, or consideration by the prosecuting
19 attorney or judge relating to any charge against the defendant or
20 to the sentencing of the defendant.

21 (c) As used in this section, "serious felony" means any of the
22 following:

23 (1) Murder or voluntary manslaughter; (2) mayhem; (3) rape;
24 (4) sodomy by force, violence, duress, menace, threat of great
25 bodily injury, or fear of immediate and unlawful bodily injury on
26 the victim or another person; (5) oral copulation by force,
27 violence, duress, menace, threat of great bodily injury, or fear of
28 immediate and unlawful bodily injury on the victim or another
29 person; (6) lewd or lascivious act on a child under the age of 14
30 years; (7) any felony punishable by death or imprisonment in the
31 state prison for life; (8) any felony in which the defendant
32 personally inflicts great bodily injury on any person, other than
33 an accomplice, or any felony in which the defendant personally
34 uses a firearm; (9) attempted murder; (10) assault with intent to
35 commit rape or robbery; (11) assault with a deadly weapon or
36 instrument on a peace officer; (12) assault by a life prisoner on a
37 noninmate; (13) assault with a deadly weapon by an inmate; (14)
38 arson; (15) exploding a destructive device or any explosive with
39 intent to injure; (16) exploding a destructive device or any
40 explosive causing bodily injury, great bodily injury, or mayhem;

1 (17) exploding a destructive device or any explosive with intent
 2 to murder; (18) any burglary of the first degree; (19) robbery or
 3 bank robbery; (20) kidnapping; (21) holding of a hostage by a
 4 person confined in a state prison; (22) attempt to commit a felony
 5 punishable by death or imprisonment in the state prison for life;
 6 (23) any felony in which the defendant personally used a
 7 dangerous or deadly weapon; (24) selling, furnishing,
 8 administering, giving, or offering to sell, furnish, administer, or
 9 give to a minor any heroin, cocaine, phencyclidine (PCP), or any
 10 methamphetamine-related drug, as described in paragraph (2) of
 11 subdivision (d) of Section 11055 of the Health and Safety Code,
 12 or any of the precursors of methamphetamines, as described in
 13 subparagraph (A) of paragraph (1) of subdivision (f) of Section
 14 11055 or subdivision (a) of Section 11100 of the Health and
 15 Safety Code; (25) any violation of subdivision (a) of Section 289
 16 where the act is accomplished against the victim's will by force,
 17 violence, duress, menace, or fear of immediate and unlawful
 18 bodily injury on the victim or another person; (26) grand theft
 19 involving a firearm; (27) carjacking; (28) any felony offense,
 20 which would also constitute a felony violation of Section 186.22;
 21 (29) assault with the intent to commit mayhem, rape, sodomy, or
 22 oral copulation, in violation of Section 220; (30) throwing acid or
 23 flammable substances, in violation of Section 244; (31) assault
 24 with a deadly weapon, firearm, machinegun, assault weapon, or
 25 semiautomatic firearm or assault on a peace officer or firefighter,
 26 in violation of Section 245; (32) assault with a deadly weapon
 27 against a public transit employee, custodial officer, or school
 28 employee, in violation of Sections 245.2, 245.3, or 245.5; (33)
 29 discharge of a firearm at an inhabited dwelling, vehicle, or
 30 aircraft, in violation of Section 246; (34) commission of rape or
 31 sexual penetration in concert with another person, in violation of
 32 Section 264.1; (35) continuous sexual abuse of a child, in
 33 violation of Section 288.5; (36) shooting from a vehicle, in
 34 violation of subdivision (c) or (d) of Section 12034; (37)
 35 intimidation of victims or witnesses, in violation of Section
 36 136.1; (38) criminal threats, in violation of Section 422; (39) any
 37 attempt to commit a crime listed in this subdivision other than an
 38 assault; (40) any violation of Section 12022.53; (41) a violation
 39 of subdivision (b) or (c) of Section 11418; (42) *solicitation of*
 40 *murder, in violation of subdivision (b) of Section 653f; and* ~~(42)~~

1 (43) any conspiracy to commit an offense described in this
2 subdivision.

3 (d) As used in this section, “bank robbery” means to take or
4 attempt to take, by force or violence, or by intimidation from the
5 person or presence of another any property or money or any other
6 thing of value belonging to, or in the care, custody, control,
7 management, or possession of, any bank, credit union, or any
8 savings and loan association.

9 As used in this subdivision, the following terms have the
10 following meanings:

11 (1) “Bank” means any member of the Federal Reserve System,
12 and any bank, banking association, trust company, savings bank,
13 or other banking institution organized or operating under the laws
14 of the United States, and any bank the deposits of which are
15 insured by the Federal Deposit Insurance Corporation.

16 (2) “Savings and loan association” means any federal savings
17 and loan association and any “insured institution” as defined in
18 Section 401 of the National Housing Act, as amended, and any
19 federal credit union as defined in Section 2 of the Federal Credit
20 Union Act.

21 (3) “Credit union” means any federal credit union and any
22 state-chartered credit union the accounts of which are insured by
23 the Administrator of the National Credit Union administration.

24 (e) The provisions of this section shall not be amended by the
25 Legislature except by statute passed in each house by rollcall
26 vote entered in the journal, two-thirds of the membership
27 concurring, or by a statute that becomes effective only when
28 approved by the electors.

29 SEC. 5. No reimbursement is required by this act pursuant to
30 Section 6 of Article XIII B of the California Constitution because
31 the only costs that may be incurred by a local agency or school
32 district will be incurred because this act creates a new crime or
33 infraction, eliminates a crime or infraction, or changes the
34 penalty for a crime or infraction, within the meaning of Section
35 17556 of the Government Code, or changes the definition of a
36 crime within the meaning of Section 6 of Article XIII B of the
37 California Constitution.